

ESTTA Tracking number: **ESTTA83210**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91170390
Party	Plaintiff Sigma Relocation Group, LLC d/b/a Umovefree.com
Correspondence Address	Scott L. Harper Carstens & Cahoon LLP 13760 Noel Road, Suite 900 Dallas, TX 75240 UNITED STATES harper@cclaw.com
Submission	Motion to Consolidate
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Date	05/31/2006
Attachments	Motion to Consolidate.pdf (5 pages)(431022 bytes)

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presently pending before the Board. The current cancellation and opposition proceedings involve common questions of law and fact, identical marks and the same parties.

**I.**

**BACKGROUND**

The above captioned Cancellation No. 92044611 was instituted by Order of the Board dated June 10, 2005. The mark which is the subject of Cancellation No. 92044611 is Registration No. 2,953,832, for the mark MOVEFORFREE.COM, for apartment locating services; providing information in the field of real estate, namely properties available for purchase or rent by means of a web site; real estate brokerage; and real estate listing in International Class 36 and moving van services in International Class 39. Cancellation No. 92044611 is currently pending. Registrant has filed an Answer in the cancellation proceeding. Registrant's attorney, Mr. Daniel T. Earle, has filed a Motion for Extension of Trial Dates requesting extensions of the trial periods, which is pending determination by the Board.

The above captioned Opposition No. 91170390 was instituted by Order of the Board dated April 15, 2006. The trademark application which is subject of Opposition No. 91170390 is U.S. Serial No. 78/589,267, for the mark MOVEFORFREE.COM, for apartment locating services, operating marketplaces for sellers of real estate; real estate brokerage; and real estate listing services in International Class 36. Opposition No. 91170390 is currently pending. However, the Applicant has not yet filed an Answer to the Opposer's Notice of Opposition. Applicant's attorney in Opposition No. 91170390, Mr. Daniel T. Earle, has filed a Motion for an Extension of Time to File an Answer,

which is pending determination by the Board. Opposer served written discovery requests upon Applicant in Opposition No. 91170390 on May 18, 2006.

The same mark, MOVEFORFREE.COM, is at issue in both proceedings and is being utilized on very similar, if not identical, services. In both proceedings, Petitioner/Opposer seeks cancellation and opposes registration of the Registrant/Applicant's trademark MOVEFORFREE.COM on grounds that said mark is generic. Registrant/Applicant has filed an answer and affirmative defenses in Cancellation No. 92044611. Although Registrant/Applicant has not filed an answer to the Opposer's Notice of Opposition at this time, it is quite likely that the Registrant/Applicant will raise similar, if not identical, issues and defenses in both proceedings.

## II.

### ARGUMENT

Petitioner/Opposer hereby moves to consolidate the referenced proceedings for purposes of trial pursuant to Fed. R. Civ. P. Rule 42(a) and TBMP Section 511. Although the Board ordinarily does not consider motions to consolidate prior to the filing of an answer in each case to be joined, the Board may, in its discretion, order cases to be consolidated prior to joinder of issue.<sup>1</sup>

As to the proceedings at issue, the alleged grounds for both the cancellation and opposition proceedings are identical as they are based on the generic nature of the Registrant/Applicant's mark MOVEFORFREE.COM. Moreover, the same questions of law and fact are involved in both proceedings. Consolidation of the proceedings will save the Board and the parties time, effort and expense that would be required in two separate

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<sup>1</sup> TBMP Section 511.

cancellation and opposition proceedings. In view of the foregoing, Petitioner/Opposer Sigma respectfully requests that the proceedings be consolidated. This motion is sought for purposes of judicial economy and not for reasons of delay.

Counsel for Sigma has contacted counsel for Registrant/Applicant, Mr. Earle, by letter dated May 12, 2006 and has inquired if Registrant/Applicant would stipulate to consolidation of these proceedings. To date, no response has been received by counsel for Sigma from Registrant/Applicant's counsel and it is therefore submitted to the Board for determination.

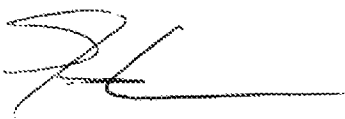
### III.

#### CONCLUSION

For the foregoing reasons, Petitioner/Opposer Sigma respectfully requests that the Board grant this motion and consolidate Cancellation No. 92044611 and Opposition No. 91170390, and that a new scheduling order be entered for the consolidated proceedings in accordance with the Board's scheduling order which has been implemented in Opposition No. 91170390.

Date: May 31, 2006

Respectfully submitted,

By: 

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**Attorney For Petitioner/Opposer**

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of Petitioner/Opposer's Motion to Consolidate Proceedings has been served upon Registrant/Applicant by mailing a copy thereof by certified mail, return receipt requested to James Shlesinger, with the offices at Shlesinger, Arkwright & Garvey, LLP, 1420 King Street, Suite 600, Alexandria, Virginia, 22314 on this the 31<sup>st</sup> day of May, 2006.

A handwritten signature in black ink, appearing to be 'SH', written over a horizontal line.

Scott L. Harper